

**Fair Political Practices Commission**  
**MEMORANDUM**

To: Chairman Randolph, Commissioners Blair, Downey, Karlan and Knox

From: Galena West, Counsel, Legal Division  
Luisa Menchaca, General Counsel

Date: May 28, 2004

Subject: Adoption of Amendments to Termination of Committees  
Regulation 18404.1

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**I. Executive Summary**

Candidate controlled committees organized for elective state office are required to terminate pursuant to regulation 18404.1. The question has been raised by several committees as to what a committee should do if it terminates and is then faced with a refund, fine or other necessary expenditure. Our current advice, in accordance with regulations 18404 and 18404.1, prohibits the reopening of terminated committees<sup>1</sup> for any purpose and no mechanism currently exists to allow terminated committees to reopen. This memorandum, and the proposed amendments to regulation 18404.1, present a procedure for committees to reopen for limited purposes. Also addressed are the questions of whether determinations made by the Executive Director to deny a committee's reopening should be appealable to the Chairman, and how long a reopened committee should be permitted to remain reopened.

Staff's view is that requiring termination of committees is beneficial, and that allowing the reopening of terminated committees is a necessary step to solve certain issues raised when committees terminate. Staff proposes the Commission adopt amended regulation 18404.1 to permit committees to reopen and to assist in the implementation of section 84214.<sup>2</sup>

**II. Background**

Currently, a committee retains its status as a committee "until such time as that status is terminated pursuant to Section 84214." (Government Code section 82013.) Government Code section 84214 states, in part, that:

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<sup>1</sup> All further references to "committee" are references to a candidate controlled committee organized for elective state office, unless otherwise specified.

<sup>2</sup> All further statutory references are to the Government Codes, unless otherwise specified.

“Committees and candidates shall terminate their filing obligation pursuant to regulations adopted by the Commission which insure that a committee or candidate will have no activity which must be disclosed pursuant to this chapter subsequent to the termination.”

Regulation 18404 sets forth the general procedures for termination. Regulation 18404.1 was adopted February 15, 2002, to interpret section 84214 and to provide for the timely termination of campaign committees after the conclusion of a state candidate’s run for office or term of office. Specifically, it provides for mandatory termination of campaign committees after certain designated intervals which differ depending on whether or not the committee has “net debts outstanding” after the campaign. The regulation was adopted in the context of implementing Proposition 34 as a means of eventually eliminating pre-January 1, 2001, committees which were not subject to Proposition 34’s contribution limits, and ensuring the closing of Proposition 34 committees with no debt outstanding.<sup>3</sup>

Over the past two years, this regulation has caused the mandatory termination of hundreds of committees. Some committees required to terminate were formed more than 15 years ago. A number of committees have applied to the Executive Director for time extensions under this regulation and the majority of those requests have been approved. Since the application of the termination rules, persons representing committees have been asking the Commission for advice as to what should be done when a refund is received, a fine must be paid, or audit costs are incurred after the committee has been terminated.

If candidates and committees receive refunds and similar payments, there is no method of acceptance and distribution consistent with the requirements of the Act. If funds were misused, no disclosure would occur if the committee was closed and no campaign bank account existed.<sup>4</sup> Also, section 85201 only permits contributions and expenditures to be made through the campaign bank account and if the campaign bank account were closed, the payment would not comply with this provision. Permitting the reopening of committees under specified circumstances addresses this problem by setting up a procedure to open a bank account and file an amendment to the Form 410, as discussed below.

This regulation was presented for a pre-notice discussion at the April Commission meeting. At that time, the Commission discussed the policy issues of requiring committees to terminate while having no mechanism to address situations where the terminated committee then discovers additional payments or expenses. The Commission also discussed the specifics of the proposed process for the reopening of a terminated

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<sup>3</sup> Recently, regulation 18531.6 was amended and regulation 18531.61 was adopted on an emergency basis, which subject pre-January 1, 2001, committees to the restrictions in section 85316, so that they may raise funds only to pay “net debts outstanding” after an election.

<sup>4</sup> The Act purports to accomplish the full and truthful disclosure of all receipts and expenditures in election campaigns “in order that the voters may be fully informed and improper practices may be inhibited.” (Section 81002(a).)

committee. The Commission determined at that time that allowing the reopening of terminated committees was desirable where terminated committees were faced with audit expenses, fines or other necessary expenses.

Specifically, the Commission determined that:

- Withdrawn candidates should be included in the time lines for termination;
- A process to reopen terminated committees is needed;
- Reasons sufficient to allow reopening include receiving a refund, paying a fine, paying audit or litigation expenses, or any other good cause that would further the disclosure requirements and contribution limits of the Act;
- Repayment of laundered funds and refunding of contributions in excess of the limits should be determined on a case-by-case basis under the “other good cause” category;
- The procedures to reopen should be clear so as not to be confused with the procedures to extend the termination date of a committee;
- An appeal process should be included with denials for reopening; and
- A termination date should be set for reopened committees.

### **III. Proposed Amendments to Regulation 18404.1**

Staff proposes that the Commission adopt amendments to regulation 18404.1 to allow for committees to reopen and to assist in the implementation of section 84214. (Appendix A.) Generally, the proposed amendments to regulation 18404.1 seek to include withdrawn candidates in the termination time frames and create a method for terminated committees to reopen in certain circumstances. Each subdivision and its respective issue is discussed below in the order it appears in the draft regulation.

#### **Subdivisions (a) and (b) – Termination Rules for Pre-2001 Committees/2001 and Post-2001 Committees.**

No changes are suggested for subdivision (a). This subdivision remains applicable to a few remaining committees and these committees should still terminate when their deadlines have been met. However, withdrawn candidates have been added to subdivision (b). Withdrawn candidates have no termination time limits within the current regulation. The regulation addresses candidates who are defeated, leave office or end the term of office for which the committee was formed. Withdrawn candidate committees would be subject to the same deadlines for termination as those applied to candidates who are defeated in an election (nine or 24 months, depending on net debts outstanding, from the date of the election).

#### **Subdivision (c) – Campaign Bank Account**

Currently, this subdivision mandates that campaign bank accounts are closed on or before termination of the candidate controlled committee, and no contributions are received after closure. In the proposed amended language, this prohibition on the receipt of

contributions has been modified to allow receipt of contributions if the committee (and a campaign bank account) is reopened. The amendment also permits the campaign bank account to be “reopened” along with the committee, but contains the limitation that contributions received by a committee reopened in accordance with this regulation are subject to the limits applicable to the election for which the committee was originally formed. This is a necessary addition to avoid confusion when the limits are adjusted by the Commission, such as the regular cost of living adjustments, and to clearly specify that the same contributions limits will be applicable. If committees are allowed to reopen, a campaign bank account would be necessary to avoid campaign funds from being placed in personal bank accounts as prohibited by sections 84307 and 85201.

#### **Subdivisions (d) – (h) – Local Committees Controlled by Candidates for Elective State Office; Creditor Notice; Extension Requests and Appeal Procedure; and Local Committees**

Only minor grammatical changes have been made to these subdivisions as explained in the April Memorandum, Pre-notice Discussion of Amendments to Termination of Committees Regulation 18404.1.

#### **Subdivision (i) – Reopening of Terminated Committees**

This subdivision has been modified in response to the Commission’s comments at the April pre-notice meeting. This subdivision is now exclusively a list of the permitted reasons a committee may submit a request to reopen. These include receiving a refund or similar payment, paying a fine, or paying expenses associated with an audit, investigation or litigation. Additionally, also permitted would be a request to reopen based on “any other good cause shown that would further the disclosure requirements or contribution limits of this title.” Investigation expenses have been added to this category because the regulation was unclear as written as to whether these expenses would be included with audit and litigation expenses or would result in an application under the “other good cause” category.

These categories of acceptable reasons for reopening a committee were included in this regulation language as well as the earlier draft because the time lines for termination are shorter than the statute of limitations for audits, enforcement proceedings and litigation. Therefore, a need exists to reopen committees to pay expenses related to these events which occur after termination. The statutes of limitations for the various actions are as varied as “four years after an audit could begin” for civil action for Chapter 4 violations (section 91011(a)) to “five years after the date on which the violation occurred” for administrative action for any violation (section 91000.5), although tolling can extend

these time lines but for fraud and concealment.<sup>5</sup> Allowing previously terminated committees to reopen to make these payments addresses practical considerations.<sup>6</sup>

### **Subdivision (j) – Use of Funds**

This subdivision contains the rules for the use of funds received into a reopened committee. The rules included have been transferred from the previous version, however, they have been carved out into a separate subdivision to clarify the regulation. Under this subdivision, expenditure of the refund or similar payment will be made consistent with Government Code sections 89510 – 89519, as applicable. This permits the refund to be used for vehicle expenses and security systems, among other things, but only if the refund would not be limited by the surplus funds provisions of section 89519. Another permitted use of refunds or similar payments under this regulation as amended would be applying the payment received to “debts that the committee declared it had no intention or ability to discharge under 2 Cal. Code Regs. section 18404.” This allows committees to use unexpected monies to pay debts previously thought to be beyond their ability to pay. However, staff notes that this payment of old debt includes the repayment of loans made by the candidates themselves to the campaign.

Additionally, this subdivision contains new language which specifies that a determination by the Executive Director that a committee meets one of the permitted reasons to reopen does not constitute a determination regarding the applicability of the rules guiding the use of those funds. In other words, just because the Executive Director approved a committee’s reopening does not mean that he or she is also stating that the committee will be in compliance with the rules regulating those funds – that is a separate determination.

### **Subdivision (k) - Procedures for Reopening Terminated Committees**

This subdivision specifies how a committee would reopen and has been altered in response to the comments received from the Commission at the April Commission meeting. The procedures now include a detailed process for applying to reopen a committee. Also included are the requirements that the Executive Director must follow when responding to those requests. In this version, the requirements make clear that a committee must apply for and receive permission from the Executive Director before reopening, and that both the request to reopen and the Executive Director’s reply must include the purpose for reopening the committee. This allows for easy tracking of that

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<sup>5</sup> Additional time lines include “four years after the date on which the violation occurred” for violations of this title (section 91000(c)) and “four years after the date the violation occurred” for civil actions (section 91011(b)).

<sup>6</sup> At an interested persons’ meeting held on March 10, 2004, prior to the April pre-notice meeting, feedback was received from political attorneys, the San Diego Ethics Commission and the Secretary of State’s office, as was discussed in the April memorandum, Pre-notice Discussion of Amendments to Termination of Committees Regulation 18404.1. The Secretary of State’s office opposed allowing committees to reopen. Their reasoning included insufficient resources, staff and storage facilities at the Secretary of State’s office, the confusion the public may face trying to track committees which reopen, and insufficient space on the committee Statement of Organization (Form 410) to identify a committee as reopened.

committee and a way to link a termination time line to when the purpose for reopening is completed.

At the suggestion of the Commission, this subdivision has also been revised to include a process to appeal the denial from the Executive Director. For consistency, this process mimics the one used when a committee applies for an extension of its termination time lines, and includes the statement that the Chairman's decision is final with no appeal to the Commission itself. This not only provides consistency, but a streamlined process which is already in place within the Commission.

The remaining procedural requirements are largely unchanged. The committee would file the same form it used to terminate, Form 410 (Statement of Organization), to declare the committee's reopening with the Secretary of State, along with written authorization from the Executive Director granting the reopening of the committee. The Form 410 would also be filed with the local filing officer so that all regulating bodies are informed of the reopening. The committee would mark "Amendment" on the Form 410 and list the committee's original identification number and name and include the word "Reopened" in parentheses after the committee name.

#### **Subdivision (l) – Standard Filing Requirements Apply**

A reopened committee is subject to all the committee filing requirements of this title including those specified in subdivision (k) of this regulation. This subdivision clarifies that all committee filing requirements are still applicable to reopened committees for the duration of their reopening. Additionally, this subdivision brings attention to the fact that subdivision (k) outlines certain filing procedures that reopened committees should follow.

#### **Subdivision (m) – Termination for Reopened Committees**

At the April pre-notice meeting, the Commission suggested changes for this subdivision to address when committees must terminate and how a reopened committee could request to remain open for additional time. This subdivision has been amended to reflect that discussion and now states that a reopened committee must terminate "within 30 days of the date the specified purpose(s) for which the committee was reopened ceases to exist." With this language, reopened committees will not need to attempt to apply the nine and 24-month termination rules but would terminate after the completion of the purpose for which they reopened.

In addition, the Executive Director has been provided with discretion to specify a date of termination when approving the reopening of a committee. This discretion allows the Executive Director to give a deadline for termination of reopened committees. This would apply, for instance, if a committee is reopening for a discrete purpose, such as receiving a refund. Additionally, the subdivision allows a committee to reapply with the Executive Director under the reopening procedures (including the appeal to the Chairman) when extending the termination date to complete the original purpose of

reopening, or when staying open to achieve an additional purpose. Through this procedure, the Executive Director can monitor these changed purposes and ensure termination of the committee at the appropriate time and the committee is not required to terminate and reopen, yet again.

#### **IV. Recommendation**

Staff recommends that the Commission adopt the proposed amendments to regulation 18404.1.

#### **Attachments**

Appendix A - Proposed Amendments to Regulation 18404.1